

(3) The debtor's right to dispute the liability has been exhausted under § 845.204; and

(4) The debtor may suspend OPM action on referral by paying the debt in one lump sum or making payments current under a repayment schedule.

(b) *Report.* When a debtor's response to the notice described in paragraph (a) of this section fails to comply with paragraph (a)(4) of this section or the debtor does not respond, and 60 days have elapsed since the notice was mailed, OPM may report to a consumer reporting agency that an individual is responsible for an unpaid debt and provide the following information:

(1) The individual's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the debt; and

(3) The fact that the debt arose in connection with the administration of FERS or CSRS.

(c) *Subsequent reports.* OPM will update its report to the consumer reporting agency whenever it has knowledge of events that substantially change the status or the amount of the liability.

§ 845.208 Referral to a collection agency.

(a) OPM retains the responsibility for resolving disputes, compromising claims, referring the debt for litigation, or suspending or terminating collection action.

(b) OPM may refer certain debts to commercial collection agencies under the following conditions:

(1) All processing required by § 845.204 has been completed before the debt is released; and

(2) A contract for collection services has been negotiated.

§ 845.209 Referral for litigation.

From time to time and in a manner consistent with the General Accounting Office's and the Justice Department's instructions, OPM will refer certain overpayments to the Justice Department for litigation. Referral for litigation will suspend processing under this subpart.

Subpart C—Standards for Waiver of Overpayments

§ 845.301 Conditions for waiver.

Recovery of an overpayment from the Fund may be waived pursuant to section 8470(b), of title 5, United States Code, when (a) the annuitant is without fault and (b) recovery would be against equity and good conscience. When it has been determined that the recipient of an overpayment is ineligible for waiver, the individual is nevertheless entitled to an adjustment in the recovery schedule if he or she shows that it would cause him or her financial hardship to make payment at the rate scheduled.

§ 845.302 Fault.

A recipient of an overpayment is without fault if he or she performed no act of commission or omission that resulted in the overpayment. The fact that the Office of Personnel Management (OPM) or another agency may have been at fault in initiating an overpayment will not necessarily relieve the individual from liability.

(a) *Considerations.* Pertinent considerations in finding fault are—

(1) Whether payment resulted from the individual's incorrect but not necessarily fraudulent statement, which he or she should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his or her possession, which he or she should have known to be material; or

(3) Whether he or she accepted a payment that he or she knew or should have known to be erroneous.

(b) *Mitigation factors.* The individual's age, physical and mental condition or the nature of the information supplied to him or her by OPM or a Federal agency may mitigate against finding fault if one or more of these factors contributed to his or her submission of an incorrect statement, a statement that did not disclose material facts in his or her possession, or his or her acceptance of an erroneous overpayment.

§ 845.303 Equity and good conscience.

Recovery is against equity and good conscience when—